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January 3, 2008

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Case Name: Personnel Security Hearing

Date of Filing: March 27, 2007

Case Number: TSO-0481

This Decision concerns the eligibility of XXXXXXXXXXXX (the individual) to obtain an access authorization (also called a security clearance) under the provisions of 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." For the reasons discussed below, I conclude that the individual's access authorization should be granted.

I. Background

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE, contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

In the course of processing the individual's request for access authorization, the local DOE security office (DOE Security) obtained information that raised a concern about his eligibility. The areas of concern were the individual's Bad Conduct Discharge from the military, his guilty plea to the charges of Misappropriation of Government Property and Improper Disposal of Government Property, and a history of financial irresponsibility. After interviewing the individual, DOE Security determined that he had not resolved its concerns, and obtained authority to conduct an administrative review proceeding under 10 C.F.R. § 710.9. The proceeding was initiated when DOE Security issued a Notification Letter under 10 C.F.R. § 710.21. In that letter, DOE Security stated that it had substantial doubt about the individual's eligibility for access authorization based on certain derogatory information that fell within the purview of one potential disqualifying criterion, 10 C.F.R. § 710.8(l) (Criterion L).¹

¹ Criterion L relates, in relevant part, to information that a person "[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. . . ."

After receiving the Notification Letter, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On March 28, 2007, the Acting Director of the Office of Hearings and Appeals appointed me the Hearing Officer in this case. At the hearing, the individual testified on his own behalf, and called as witnesses his wife and a former supervisor. The transcript of the hearing will be hereinafter cited as “Tr.” DOE Security has submitted eight exhibits into the record, and the individual has submitted two exhibits.

II. Standard of Review

The Hearing Officer’s role in this proceeding is to evaluate the evidence presented by the agency and the individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). Part 710 generally provides that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest. Any doubt as to the individual’s access authorization eligibility shall be resolved in favor of national security.” 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this decision: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct; the individual’s age and maturity at the time of the conduct; the voluntariness of the individual’s participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and evidence presented by both sides in this case.

III. The Notification Letter and the Security Concerns

In the Notification Letter, DOE Security cites Criterion L as the basis for its concerns about the individual’s eligibility for an access authorization. The derogatory information that raised the concerns falls into two forms of conduct, criminal behavior and financial irresponsibility. While serving in the military, the individual’s supervisor ordered him to dispose of surplus computer equipment in a prescribed manner. Rather than follow that order, the individual delivered the equipment to a friend who ran a local computer business, and received money in exchange for the equipment. He ultimately pled guilty to two charges of mishandling military property, served a sentence in the brig, and was discharged for “Bad Conduct” in 1998. In addition, a credit report revealed that the individual had four unpaid debts: one secured by a judgment against him which the individual asserted had been paid, one charged off, one of which the individual claimed no knowledge, and one that he thought he had completely repaid.

I find that the information set forth above constitutes derogatory information that raises questions about the individual’s honesty, reliability and trustworthiness under Criterion L. Criterion L concerns that arise from criminal activity call into question a person’s ability or willingness to comply with laws, rules and regulations. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued by the Assistant to the President for National Security Affairs, The White House (December 29, 2005) (Adjudicative Guidelines) at Guideline J; *Personnel Security Hearing, Case No. TSO-0373*, 29 DOE ¶ 83,062 (July 30, 2007). Financial irresponsibility raises a different set of concerns, because failure to live within one’s means may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and

regulations. See Adjudicative Guidelines at Guideline F; *Personnel Security Hearing, Case No. TSO-0264*, 29 DOE ¶ 83,023 (March 16, 2007).

IV. Findings of Fact

The Notification Letter recites the events in which the individual participated that have raised DOE Security's concerns. The individual does not contest the facts surrounding these events. In fact, DOE Security received its information entirely from the individual himself, through his responses on his Questionnaire for National Security Positions (QNSP), which he signed on November 8, 2005 (Exhibit 6), and the statements he made during a Personnel Security Interview conducted on August 2, 2006 (Exhibit 7).

A. Criminal Conduct While in the Navy

The individual joined the Navy at age 18 and served for almost nine years. Exhibit (Ex.) 7 at 5. When he was 23 or 24, his supervising officer directed him to dispose of surplus computer equipment by arranging to have it sent to a Navy disposal facility. *Id.* at 6. Instead of complying with instructions, he removed the equipment from the base, keeping some of it for himself at his apartment, and selling some of it to a friend who operated a computer store. *Id.* at 7; Tr. at 19. He engaged in this activity over a period of a year or more. Tr. at 19. He estimates that he received \$300 to \$400 in exchange for the equipment he sold. Ex. 7 at 22. None of this activity was detected by the Navy. *Id.* at 7.

About a year after he stopped improperly removing the computer equipment, the Navy investigated the disappearance of two laptop computers. The individual was not suspected of any involvement in the disappearance, as he was not at work when it occurred. Nevertheless, he was questioned about the event along with all the officers and enlisted persons working at the facility. He took that opportunity to confess to the investigator about the activity in which he had engaged. *Id.* On the basis of the information he provided to the investigator, the individual was court-martialed, and pled guilty to charges of Misappropriation of Military Property and Improper Disposal of Military Property. *Id.* at 8, 19-21. Because of his plea bargain, he was released from confinement after serving 100 days of a six-month sentence, but he was also sentenced to a fine and a reduction in rank and pay, and given a Bad Conduct Discharge. *Id.* at 8, 21.

B. Financial Irresponsibility

Four debts formed the basis for DOE Security's concerns about the individual's questionable handling of financial matters. According to a credit report DOE Security obtained, in July 1999 a creditor obtained a \$2444 judgment against the individual. *Id.* at 8. A second debt, in the amount of \$2431, was charged off by the creditor after going unpaid. *Id.* at 10. The credit report also lists a debt of \$476 as past due. At the time of the personnel security interview, the individual did not recognize the creditor's name, which was a collection agency, nor could he recall what transaction might have resulted in that debt. *Id.* at 11. Finally, the individual recognized the creditor of a \$397 past-due debt as the Navy credit union. At some point before he admitted his wrongful activity to the investigator, he had accepted a re-enlistment bonus. After he was discharged, he was informed that the bonus had to be repaid. He repaid the bonus in installments, and at the time, he believed he had repaid the entire amount. During the personnel security interview, DOE Security confronted him with this debt, and he believed it was

a portion of the bonus or some charge associated with the bonus. *Id.* at 11-12. The evidence in the record clarifies that the claimant of the \$476 debt was a collection agency charged with recovering the \$397 debt to the Navy credit union; they are one and the same debt, the higher figure representing the sum of fees and charges tacked onto the original debt. *Tr.* at 84.

V. Analysis

I note that the individual has been candid and thorough in providing DOE Security with the information it has requested throughout this proceeding. On the basis of that information, DOE Security had legitimate concerns about the individual's eligibility for access authorization. The individual has not challenged the derogatory information. A finding of derogatory information does not, however, end the evaluation of evidence concerning an individual's eligibility for access authorization. *See Personnel Security Hearing (Case No. VSO-0244)*, 27 DOE ¶ 82,797 (affirmed by OSA, 1999); *Personnel Security Hearing (Case No. VSO-0154)*, 26 DOE ¶ 82,794 (1997), *aff'd*, *Personnel Security Review (Case No. VSA-0154)*, 27 DOE ¶ 83,008 (affirmed by OSA, 1998). In the end, like all Hearing Officers, I must exercise my common-sense judgment in deciding whether the individual's access authorization should be granted after considering the applicable factors prescribed in 10 C.F.R. § 710.7(c). Therefore, I must consider whether the individual has produced sufficient evidence of mitigation to resolve the security concerns raised by his criminal activity and financial irresponsibility.

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. After due deliberation, I have determined that the individual's access authorization should be granted. I find that granting the individual his access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings I make in support of this decision are discussed below.

A. Criminal Conduct

The individual has been forthright throughout this proceeding in providing full disclosure about his wrongdoing for which the Navy court-martialed him and sentenced him to confinement. He has also acknowledged formally to DOE Security that he engaged in criminal conduct and has attempted to demonstrate that he has reformed his behavior. After considering his explanation of the criminal activity, the consequences he accepted and endured for that activity, its occurrence ten years in the past, his change of character since that time and the motivations for that change, and his behavior since that time, I have determined that there is little likelihood that the individual will engage in similar activity or any other conduct that tends to show that he is not honest, reliable, or trustworthy.

The individual explained at the hearing that he had been injured while on duty at sea, and was continually re-injuring himself. He was bitter and disillusioned about the way the Navy had treated him with regard to the injury. *Tr.* at 9-10, 25. Due to consolidation of operations, the facility in which he worked was losing storage space, and his commander stated that he wanted old, unused computer equipment to be disposed of. *Tr.* at 11, 37. Following standard disposal practices would have resulted in delays of a year or more before the equipment might be removed. *Ex. 7* at 6. Partly in an effort to satisfy his superior and partly, he now admits, out of revenge for his perceived poor treatment by and disappointment in the Navy, he decided to dispose of the equipment in his own way: by taking some of it to his apartment and by selling

some of it to a friend who ran a small computer company, for which he received a store credit of about \$300 or \$400. *Id.* at 12, 22, 37. In hindsight, he admits that his commander did not intend to give him liberty to dispose of the equipment as he wished, but at the time he convinced himself that his actions were justified. *Id.* at 12. He removed computer equipment from his facility for a year or more. *Id.* at 18-19.

About a year later, two laptops disappeared from his facility. *Id.* at 13. The Navy investigated the disappearance, questioning all the personnel involved with computer equipment, including him. *Id.* at 27. During the year between when he stopped removing computer equipment and this investigation, he had a change of heart. He became a born-again Christian, active in his church and in Bible study. *Id.* at 13. Although he had nothing to do with the laptops' disappearance, he seized the opportunity to confess to the investigator about his past wrongdoing. *Id.* at 13-14. He stated that he spoke up at that time, despite the strong possibility that he could have escaped detection, because his conscience was nagging him. *Id.* at 13. Whether motivated by spirituality or not, the individual stepped forward voluntarily to admit the truth. Such behavior indicates to me a substantial change in behavior and demonstrates an effort to redress his earlier wrongful behavior. The consequences he endured for speaking up were significant: demotion, fines, confinement, and ultimately a Bad Conduct Discharge. *Id.* at 15. He then decided that he would look forward and commit to doing his best at whatever job he could find. *Id.* at 15, 16, 50. Saddled with his Bad Conduct Discharge, he accepted low-paying jobs, including one as a trash collector. *Id.* at 16.

After a few years and some luck, he managed to secure a position in information technology. *Id.* In the five years he stayed with that company before moving to his present position, he earned the respect and trust of his employer. His supervisor at that employer testified at the hearing. He stated that the individual had informed him about his past. *Id.* at 139. Nevertheless, the supervisor found the individual to be a trustworthy employee, who ironically was responsible for vast quantities of computer equipment, and arranged for the individual's promotion to a managerial position. *Id.* at 139-40. His wife pointed out at the hearing that the individual was in a position to continue to abscond with computer equipment while working for that employer, but never did. *Id.* at 130.

Considering the evidence before me, I have determined that the individual's criminal conduct belongs to his past. First of all, it occurred in a single context roughly ten years ago. There is no evidence that the individual has engaged in any similar activity since then, even though he was later in a position to do so. After he engaged in the wrongdoing, he underwent a transformation of character, which gave him insight into his criminal behavior and led him to admit his wrongdoing despite the consequences. Since then, he has effectively started over, committing to doing his best in his profession, getting married, raising children, and attending to the needs of his family. It is therefore my opinion that the individual has mitigated the security concerns that DOE Security raised under Criterion L with respect to his criminal conduct while he was serving in the Navy.

B. Financial Irresponsibility

Once a pattern of financial irresponsibility has been established, an individual must demonstrate a new pattern of financial responsibility in order to mitigate or resolve the security concerns raised by the established pattern of financial irresponsibility. *Personnel Security Hearing (Case No. TSO-0170)*, 29 DOE ¶ 82,811 (2006); *Personnel Security Hearing (Case No. TSO-0108)*,

26 DOE ¶ 82,764 at 85,699 (1996). In the present case, the individual has demonstrated that his pattern of financial irresponsibility is in his past, that he is now financially responsible, and that he is likely to continue to be so in the future.

At the hearing, the individual explained how he had come to accumulate his debts. He was 18 years old when he enlisted in the Navy and remained single throughout his military service. Tr. at 10. Because he had no financial responsibilities, he was not careful with his money, and purchased what he desired without restraint, including large purchases on time. *Id.* at 16-17, 50, 53. As a result of the Bad Conduct Discharge, he forfeited a substantial re-enlistment bonus that he had already received, which created another debt he had to repay. *Id.* at 52. Moreover, after he was discharged, he had difficulty finding work; employers were not enthusiastic about hiring a person with a Bad Conduct Discharge. *Id.* at 16. Consequently, he continued to be unable to meet his repayment schedules for purchases he made through loans. It was during this period that one creditor obtained a judgment against him and others wrote off his debts as uncollectible. When he eventually found a well-paying job, he repaid the re-enlistment bonus quickly. Ex. 7 at 12-13.

His testimony comports with the other evidence in the record. He pled guilty to Misappropriation of Military Property and Improper Disposal of Military Property in 1997, served his sentence in the brig in late 1997 and early 1998, and was discharged in late 1998. The judgment against him dates from 1999. Ex. 6 (QNSP) at 7-8. The dates of the other debts are not in the record, but it is evident that they were incurred while he was in the Navy or shortly after he was discharged, while he was still living in the same metropolitan area in which he served.

The individual and his wife further testified at the hearing about how his spending pattern changed and how he now handles his financial affairs. After his discharge and a few years of working at low-paying jobs, he landed a well-paying job in the computer industry. Tr. at 16. He repaid the re-enlistment bonus the Navy forfeited after his guilty plea; he believed he had repaid the amount in full until a related debt appeared on a credit report that DOE Security obtained years later. *Id.* at 84-85. About six years ago, he married and started a family. *Id.* at 50 (testimony of individual), 122 (testimony of wife). His wife stated that she knew about the individual's bad debts before they married. *Id.* at 116. She testified that her belief was that he had made poor decisions about money when he was single, but that his poor money management in the past was not representative of the husband and father he is now. *Id.* at 124-25. He and his wife kept up with current expenses, which increased as children came along. *Id.* at 122. They intended to pay off his old, written-off debts when they could, but they felt those debts were not as important to pay off as the debts they were currently incurring. *Id.* at 88-89, 121.

The individual's management of his finances has changed significantly since he married. He and his wife are frugal in their spending, as he demonstrated at the hearing: their larger purchases were either required by the family, for example, a bigger car when his mother-in-law joined the household, or home improvements that were both needed and would increase the resale value of their home. *Id.* at 66-67, 68, 73, 76. When the opportunity arose, they consolidated their credit card debt onto new credit cards that charged no interest. *Id.* at 53, 55, 57. Although such consolidation did not reduce their debt, it will ultimately reduce the cost of repaying those debts. Moreover, when DOE Security confronted him with its concerns about the charged-off debts from his time in the Navy, they used retirement savings to pay them off. *Id.* at 107-110. A recent credit report, which DOE Security entered into the record and which was discussed in

detail at the hearing, establishes that the debts that raised DOE Security's concerns have now been repaid. *See* Ex. 8. Finally, at the hearing, the individual presented a detailed, current budget for his household, which set forth the take-home incomes of the individual and his wife and the family's expenses, including the mortgage; payments on car loans, outstanding credit card debt, and home improvement purchases; commuting costs; child care; utilities; groceries; entertainment; and medical care not covered by insurance. *Id.* at 55-82. The presented budget demonstrates that the family now has more than sufficient income to meet its expenses.

I am convinced that the individual's financial irresponsibility is no longer a security concern. He is clearly and painfully aware of how he mismanaged his finances when he was single and bore no responsibility for support of anyone other than himself. He is now 36 years old, and nearly a decade has passed since he incurred the debts that raised DOE Security's concerns. Through his wife's influence and guidance, as well as his own internal compass, he has significantly changed how he manages his money from his single days. He and his wife have been settling accounts to clean up the individual's credit, to the extent they could, since they married six years ago. *Id.* at 127-28. Once DOE Security made him aware that his charged-off debts raised security concerns, he and his wife repaid them immediately, rather than waiting until they felt they were in the proper financial position to do so, in accordance with their chosen strategy. His current financial picture is solid: the family income exceeds its current expenses—including the servicing of existing debts—by a comfortable margin. In light of his current pattern of financial responsibility and his demonstrated ability to meet his current household expenses, it is my opinion that the individual has mitigated the security concerns that DOE Security has raised under Criterion L with respect to his former pattern of financial irresponsibility.

VI. Conclusion

As explained in this Decision, I find that DOE Security properly invoked 10 C.F.R. § 710.8 (l) in determining that it could not grant the individual's access authorization without resolving concerns raised by derogatory information it received regarding the individual. For the reasons I have described above, I find that the individual has sufficiently mitigated those security concerns. I therefore find that granting the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I have determined that the individual's access authorization should be granted. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

William M. Schwartz
Hearing Officer
Office of Hearings and Appeals

Date: January 3, 2008